

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICKY PATU,

Plaintiff,

v.

PIERCE COUNTY JAIL, C/O LEE,

Defendants.

CASE NO. 15-5332 RJB-KLS

ORDER ON REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge Karen L. Strombom. Dkt. 9. The Court has considered the Report and Recommendation, Plaintiff's objections, and the remaining record.

In this § 1983 case, Plaintiff alleges in his Amended Complaint that his constitutional rights were violated when unnamed officers at the Pierce County, Washington jail did not allow him to shower immediately after he vomited and defecated all over himself. Dkt. 7, at 3. He asserts that the officers laughed at him. *Id.* Plaintiff also claims that C/O Lee took him to segregation on several occasions "for no reason upon arriving back from Western State." *Id.* He maintains that while in segregation he was not given "adequate food and medical care." *Id.*

1 Plaintiff's Amended Complaint does not state when these events occurred, but in his original
2 proposed complaint, he indicated that they occurred in 2009. Dkt. 1.

3 On June 11, 2015, the instant Report and Recommendation was filed. Dkt. 9. It
4 recommends dismissing Plaintiff's Amended Complaint because Plaintiff, despite being given an
5 opportunity to amend his complaint and cure several deficiencies, fails to state a viable claim
6 against the Pierce County Jail, his claims are barred by the statute of limitations, and he failed to
7 exhaust his claims in accord with the Prison Litigation Reform Act 42 U.S.C. § 1997e(a). *Id.*
8 The Report and Recommendation also recommends that this dismissal count as a strike pursuant
9 to 28 U.S.C. § 1915(g). *Id.*

10 The Report and Recommendation (Dkt. 9) should be adopted. Plaintiff's case should be
11 dismissed for the reasons stated in the Report and Recommendation. The dismissal should count
12 as a strike under 28 U.S.C. § 1915(g).

13 Plaintiff filed three pleadings in response to the Report and Recommendation. Dkts. 10,
14 11 and 12. Plaintiff's responses do not provide a basis to reject the Report and
15 Recommendation. In his first pleading, he inquires as to whether he still has to pay the filing fee
16 despite having his case dismissed. Dkt. 10. Plaintiff must still pay the filing fee. 28 U.S.C. §
17 1915(e)(2) ("[n]otwithstanding any filing fee, or any portion thereof, that may have been paid,
18 the court shall dismiss the case at any time if the court determines that . . . the action . . . is
19 frivolous or malicious . . . [or] fails to state a claim on which relief may be granted").

20 Plaintiff also moves the Court reconsider the decision to count the dismissal as a strike.
21 Dkt. 12. "To address concerns that prisoners proceeding IFP were burdening the federal courts
22 with frivolous lawsuits, the PLRA altered the IFP provisions for prisoners in an effort to
23 discourage such suits." *Andrews v. Cervantes*, 493 F.3d 1047, 1051-52 (9th Cir. 2007).

“Prisoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP status under the three-strikes rule,” found in 28 U.S.C. § 1915(g). *Id.*, at 1052. Under 28 U.S.C. § 1915(g),

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Plaintiff’s case here should be dismissed for failure to state a claim upon which relief may be granted as stated in the Report and Recommendation. Accordingly, the dismissal should be counted as a strike under 28 U.S.C. § 1915(g).

In response to the Report and Recommendation, Plaintiff also re-filed an application to proceed *in forma pauperis*. Dkt. 12. His initial application was granted on May 26, 2015 (Dkt. 4) and so this second application (Dkt. 12) should be stricken as moot.

It is **ORDERED** that:

- Plaintiff’s second application to proceed *in forma pauperis* (Dkt. 12) **IS STRICKEN AS MOOT**;
- The Report and Recommendation (Dkt. 9) **IS ADOPTED**;
- This case is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted; and
- This dismissal shall count as a **STRIKE** under 28 U.S.C. § 1915(g).

The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate judge Karen L. Strombom, all counsel of record, and to any party appearing *pro se* at said party’s last known address.

1 Dated this 29th day of June, 2015.

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4 ROBERT J. BRYAN
United States District Judge